

REMARKS

With the entry of the present Amendment, claims 1, 5-19 and 25-34 are in this application. Claims 2-3, 20-24 and 36-38 have been cancelled without prejudice herein. None of the amendments or revisions to the figures made herein constitutes the addition of new matter.

Request for Acceptance of Replacement Drawings

The Examiner has disapproved the Replacement Drawings filed September 27, 2010. The Examiner has stated that although the replacement drawings show the motor, power supply and pump schematically in a co-located manner with each other, their relation to the remainder of the device cannot be readily ascertained from the those drawings. The drawings were said to lack an explicit connection which is not supported by the original disclosure which is considered new matter. The Examiner requires that the motor, power supply and centrifugal impeller blower and fan must be shown or the features cancelled from the claims and that no new matter should be entered and has required that these features be shown in the drawings or removed from the claims.

Applicants respectfully maintain that one of ordinary skill in the art can readily understand the motor, power supply and pump/impeller/fan without the addition of detail about these parts to the figures. Moreover, the art understands how to connect such components without a detailed visual representation. However, in the interest of advancing prosecution and without acquiescing to any deficiency, applicant has entered reference lines between the pump and valving in Figures 1 and 4. The Examiner considers that the power supply, motor and pump (impeller, fan) are shown schematically and co-located, consistent with the verbal description in the Specification. Note that 37 C.F.R 1.83(a) states "conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing

symbol or a labeled representation (e.g., a labeled rectangular box)".

The heart of the invention relates to the decreased dead volume during breathing augmentation using the claimed invention. This is accomplished via the close proximity (co-location) of the pressurizing means to the mask. The art would know that an electrical connection would be used to connect a power supply to the motor. The application at page 4, fourth and fifth paragraphs, refers to an electric battery (for example powered by batteries) and cables connecting power supply and pump. Alternative connection is also discussed. One of ordinary skill in the art knows how to make functional connections and it should not be necessary to show these features in the drawings and could readily understand without these features being shown in detail in the drawings. Connecting lines were shown in the replacement figures provided in September 2010.

In the interest of advancing prosecution and without acquiescing to the objection, Applicant submits Replacement Drawings herewith. These drawings show a dotted line connecting the pump to the second valve portion (60). It is believed that this resolves the Examiner's concerns about the drawings. Support is inherently found in the as-filed Specification. Connection of the pressurizing means (e.g., pump) to the valving, which is connected to the mask, is clear and readily understood to one of skill in the art.

Applicants respectfully maintain that the revised drawings of September 2010 did not and those provided herewith do not comprise new matter in that there is verbal support in claims 4-6 and 26-27 and in the Specification at page 4, 4th and 5th paragraphs and in pages 12-14. See also page 8, third and seventh paragraphs, and page 9, third and fourth full paragraphs, and page 11, third full paragraph.

Annotated Drawings, which show the additions as marked with a bracket and the handwritten words "added in replacement drawings" are submitted herewith.

Approval and entry of the Replacement Drawings submitted herewith is respectfully requested.

The Requirement for Election/Restriction

Once the elected species (Group IV) is found allowable, extension of examination to the remaining species is respectfully requested.

The Rejections under 35 U.S.C. 112, first paragraph

Claims 1-3, 5-34 and 36-38 have been rejected as allegedly failing to comply with the enablement rejection. Applicant respectfully traverses this rejection.

The Patent Office has said the claims require the respiratory device to be arranged to conduct breathable gas to the trachea of the patient via a tracheotomy or via a tube through the mouth to the trachea and also requires the characterization of a pressure means so located as to impart pressure to gasses immediately adjacent to the site of the tracheotomy. The Specification is alleged to enable one of ordinary skill in the art to arrange the respiratory device with respect to the trachea or tracheotomy and it is further said that the disclosure as related to Figs.1 and 4 does not mention structure with respect to the tracheotomy or trachea.

In the interest of advancing prosecution and without acquiescing to the rejection, Applicant has cancelled claims 203, 20-24 and 36-38 without prejudice. This is believed to resolve the rejection with respect to the device used for a patient with a tracheotomy or one in whom the air is delivered to the trachea via a tube. This leaves the claimed device as related to a patient to whom the air is delivered to the mouth via the mask. As all of the Examiner's comments relate to the apparatus used for a tracheotomized patient, it is believed that the rejection has been rendered moot and that inclusion of claim 1, 5-19 and 25-35 was in error.

In view of the foregoing, Applicant respectfully maintains that the Specification

adequately supports the claimed invention so as to comply with the requirements of 35 U.S.C. 112, first paragraph, and the rejection must be withdrawn.

Conclusion

In view of the foregoing, it is submitted that this case is in condition for allowance, and passage to issuance is respectfully requested.

If there are any outstanding issues related to patentability, the courtesy of a telephone interview is requested, and the Examiner is invited to call to arrange a mutually convenient time.

This Response is accompanied by Replacement Drawings, Annotated Drawings, Request for Continued Examination a Petition for Extension of Time (three months) and payment of the fee of \$960.00 pursuant to 37 C.F.R. 1.17(a) and 1.17(via the EFS WEB system. It is believed that this Amendment does not necessitate the payment of any additional fees under 37 C.F.R. 1.16-1.17. If this is incorrect, please deduct any additional fees due under the foregoing Rules from Deposit Account No. 07-1969.

Respectfully submitted,

/donnamferber/

Donna M. Ferber
Reg. No. 33,878

GREENLEE SULLIVAN P.C.
4875 Pearl East Circle, Suite 200
Boulder, CO 80301
Telephone: (303) 499-8080
Facsimile: (303) 499-8089
E-mail: uspto@mail@greenleesullivan.com
Attorney Docket No. 23-06